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2
3 The Honorable Fred Van Sickle

4 Steven C. Lacy
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FILED IN THE
U.S. DISTRICT COURT
Eastern District of Washington

MAR 18 1999

JAMES R. LARSEN, Clerk

Deputy

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8
9 IN THE UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF WASHINGTON

11 JAMES M. BLACKFORD,)

12 Plaintiffs,)

NO. CS-98-032-FVS

13 vs.)

14 BATTELLE MEMORIAL INSTITUTE,)

PLAINTIFF'S STATEMENT
OF SPECIFIC FACTS IN
OPPOSITION TO DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT

15 Defendant.)

16 In accordance with Local Rule 56.1 plaintiff submits the
17 following Statement of Specific Facts:

18 1. James M. Blackford was employed by the defendant,
19 Battelle Memorial Institute, from August 10, 1992, until
20 he was discharged by Battelle on June 23, 1997.

21 **Blackford Declaration, #1**

22 2. Upon his discharge from employment Blackford, was given
23 a letter which stated that "performance issues have
24 resulted in an inability on your part to obtain and
25 sustain project funding." **Blackford Declaration, #2**

26 3. No "performance issues" were identified by Battelle
27 management and no explanation was given to Blackford

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regarding the use of the term "performance issues" at the time of his discharge, and Battelle has refused to answer any questions about the nature of the discussions by management which led to the discharge decision.

**Blackford Declaration, #3 and Deposition of Richard Neal,
pp. 49-51 (Exhibit 1)**

4. Blackford's last two performance evaluations indicated better than satisfactory performance on his part. At the conclusion of his evaluation dated December 16, 1995, his supervisor, Earl Heister, had given him an overall rating of "very good", indicating an employee who "Meets Battelle's high standards for the job category and is exhibiting continuous growth." On January 20, 1997, that same supervisor, Earl Heister, summarized Blackford's performance under the PERFORMANCE SUMMARY portion of the evaluation by stating, "Mike, you have continued to make progress this past 15 months both in your interpersonal style and cooperation on the project teams with which you have aligned during this performance period." Apparently due to a change in the format of Battelle evaluations, there was no overall rating assigned to Blackford by that evaluation. **Blackford Declaration, #4, Exhibits A & B to Blackford Declaration. Contrary to Defendant's Fact #7**

5. Toward the end of his employment at Battelle, despite the improvement he had achieved as indicated by his evaluations, Blackford was finding it unexpectedly difficult to find project managers who would request that

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he be assigned to them on project work. He formed the understanding, on the basis of comments made to him by some of those project managers, that Mr. Heister and others in Battelle's management were sabotaging his attempts to find work on projects. **Blackford Declaration, #5 Contrary to Defendants Fact #7**

6. In one instance a project manager actually copied Blackford on an E-mail exchange between the project manager and Mr. Heister regarding the manager's desire to utilize Blackford on a project and the refusal of Mr. Heister to agree to allow funding for Blackford's participation. That project manager, James A. Wise, recounted in that E-mail that another member of the management team, Rick Chidester, had attempted to discourage Mr. Wise from using Blackford on his project, telling Mr. Wise, "We don't want him here. He's a troublemaker." **Blackford Declaration, #6, Exhibit C to Blackford Declaration Contrary to Defendants Fact #14**

7. There was no formal or written employment rule or policy at Battelle requiring that employees such as Blackford maintain a certain level of funded participation in projects on penalty of discharge. **Deposition of Richard Neal, p. 24 (Exhibit 1), Mahan Deposition, pp. 12-13 (Exhibit 2)** Blackford was never presented with such a rule or policy in any formal sense prior to being told by Mr. Heister, on page three of his last performance evaluation that it was "Our cultural expectation" ...

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1 "that senior staff, like yourself, will keep themselves
2 fully funded on project work." Blackford did complain to
3 Mr. Heister on more than one occasion about the fact that
4 he wasn't being efficiently utilized, requesting that
5 management at Battelle simply assign him work or
6 projects, rather than making him struggle to find project
7 work in the face of what appeared to be opposition by
8 management to his being selected for projects. **Blackford**
9 **Declaration, #7**

10 8. An active conflict between Blackford and Battelle
11 management had occurred in early 1995 when Blackford was
12 given, in his opinion, an unwarranted poor performance
13 evaluation following activities on his part which he felt
14 were protected by law. Those activities had included
15 efforts on his part in support of prevention of workplace
16 discrimination, identifying an impending act of copyright
17 infringement, pointing out a lack of management controls
18 causing waste of federal funds, and possible
19 misrepresentations by Battelle to the Department of
20 Energy. The substance of the criticism of Blackford in
21 the negative evaluation he was given was that management
22 perceived him to be spending "too much time analyzing and
23 complaining about the . . . (workplace) . . environment
24 and how you feel it limits your contribution."

25 **Blackford Declaration, #8, Exhibit D to Blackford**
26 **Declaration**

27 9. Based on the belief that his poor performance review and

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1 additional attempts to discipline him at that time were
2 being done in retaliation for his protected activities,
3 Blackford had complained of such treatment in writing
4 both to higher level management at Battelle and to
5 Representative Richard "Doc" Hastings, outlining the
6 nature of his protected activities and the retaliation he
7 had experienced. **Blackford Declaration, #8 (duplicated
8 in Declaration), Exhibits E and F to Blackford
9 Declaration**

10. Management at Battelle recognized that Blackford's
11 communication to management and to legislative authority
12 gave him status as a whistleblower. **Deposition of
13 Richard Neal, pp. 7-8 (Exhibit 1)** Moreover, management
14 knew that Blackford was complaining of being harassed and
15 subjected to retaliation for opposing discrimination at
16 Battelle. **Deposition of Richard Neal, pp. 15-16 (Exhibit
17 1); Deposition of Robert Mahan, pp. 30-31 (Exhibit 2)**
18 The Human Resources officer also recognized that Battelle
19 policy required the development of an improvement plan
20 and its implementation prior to any discharge, thus
21 necessitating that a failure to succeed on Blackford's
22 part be documented. **Deposition of Richard Neal, p. 9
23 (Exhibit 1) Contrary to Defendants Fact # 14**

24. After Blackford had registered the above-referenced
25 complaints, he was summoned to a meeting with his
26 supervisor and certain Battelle management personnel,
27 including a personnel officer, Richard Neal, where he was

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strongly criticized and informed that he was being placed on a Corrective Action Plan. The tone of that meeting was hostile, with hostility being manifested on both sides. Based on his supervisor's reaction to that meeting, he was ordered to undergo a fitness for duty evaluation by a Battelle psychologist, which would have provided a means to terminate Blackford. However, the psychologist found Blackford free of any condition rendering him unfit for duty. Instead, the psychologist documented the ongoing conflict in the workplace which had precipitated the fitness evaluation. **Blackford**

12. Attempting to work within the system, although having little faith in its efficiency, Blackford acquiesced thereafter in a suggestion by Battelle Human Resources personnel that he submit his complaints to the Battelle Employee Concerns Program, which utilized a committee of other employees selected by management to hear employee concerns and make recommendations to management. Blackford was given no agenda or opportunity to prepare for his interrogation by that group. The process, so far as Blackford could determine, resulted in no significant independent investigation or attempt to resolve any of the issues he had raised. After a superficial review of the "conflict", the committee supported management's evaluation. However the committee concluded that the process utilized by management had not given Blackford an

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opportunity to correct his perceived intolerance and inability to work effectively with others. **Blackford Declaration, #10**

13. On June 27, 1995, Blackford was reassigned to a new supervisor, Earl Heister, who he was told would oversee his Corrective Action Plan. Mr. Heister had been involved in some of the issues leading to the earlier conflict. Nevertheless, Blackford became resigned to the idea that he needed to mend fences and become a well-accepted member of the Battelle community, despite his continued belief in the fact that management practices remained both wasteful and discriminatory. Blackford worked hard at those goals, with the result that he achieved them. **Blackford Declaration, # 11. Contrary to**

14. It became apparent to Blackford, however, that Battelle management was not content to forgive and forget, as illustrated by the way management personnel went about encouraging project managers to decline his requests to participate in project work. Blackford was not privy to all that was discussed between those project managers and Battelle supervisors, but he was informed by some project managers that supervisors were advocating his exclusion from projects. **Blackford Declaration, #12**

15. On April 9, 1997, Blackford reported to Bob Mahan about a serious discrepancy which he had discovered during an assignment. Blackford had been assigned some work

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1 incidental to a report which Battelle was required to
 2 provide to the Department of Energy detailing proposed
 3 expenditures by Battelle based on actual expenditures
 4 during fiscal year 1996, a function overseen by Mahan.
 5 The figures were to be used by DOE for the preparation of
 6 its budget proposal for the upcoming federal
 7 appropriations. In reviewing the figures that were
 8 slated to be provided to DOE, Blackford noticed that they
 9 seemed very similar to the figures that had been provided
 10 the previous year, based on 1995 actuals. Analyzing
 11 further, Blackford determined that approximately 80
 12 percent of the numbers were exactly the same as had been
 13 reported in 1996 based on 1995 expenditures. That was a
 14 statistical impossibility, strongly suggesting that
 15 Battelle was about to misrepresent to DOE the financial
 16 figures to be relied upon. After reporting that fact to
 17 Mr. Mahan, Blackford was taken off that project.
 18 **Blackford Declaration, #13, Mahan Deposition, pp. 23-25,**
 19 **28 (Exhibit 2)**

20 16. Mahan knew that if the DOE became dissatisfied in some
 21 fashion with the reports or services he provided, that
 22 such would have had an adverse impact on Battelle's
 23 budget. **Mahan Deposition, pp. 28-29. (Exhibit 2)**
 24 Battelle's most significant sources of funding are two
 25 government contracts with the Department of Energy.
 26 **Mahan Deposition, p. 8-9 (Exhibit 2)** Mahan, who had no
 27 supervisory responsibility for Blackford since early in
 28

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1 Blackford's career at Battelle, had started a private
 2 documentation file on Blackford, following discussions
 3 with Human Resources personnel, as early as November,
 4 1993, in an admitted attempt to support a potential
 5 discharge of Blackford. Mahan has never kept such a file
 6 on anyone else at Battelle. **Mahan deposition, pp. 77-82**
 7 (**Exhibit 2**) The Human Resource representative was a
 8 participant in the decision to discharge Blackford.
 9 Deposition of Richard Neal, pp. 47-48 (**Exhibit 1**)
 10 **Contrary to Defendants Fact # 15** (It is hardly
 11 conceivable that Mr. Neal did not share all his
 12 information with the other management people in that
 13 meeting, the contents of which the defense refuses to
 14 disclose.)

15 17. It was only after Blackford had been terminated from
 16 Battelle that he viewed evidence that clearly inferred a
 17 two year effort on behalf of Battelle management to get
 18 rid of him without making it appear to be illegal
 19 retaliation. A friend of Blackford provided him with a
 20 copy of a printout of a computer mail entry, called a
 21 news posting, written by Darren Curtis, a Battelle
 22 employee who was close personal friend and hunting buddy
 23 of Earl Heister, the supervisor who had fired Blackford.
 24 **Curtis Deposition, pp. 44-45, 55, 60-63, 66-80 (Exhibit**
 25 **3)** Blackford later engaged in an E-mail exchange with
 26 Mr. Curtis in which Blackford reproduced for him his
 27 entry and requested that Curtis clarify it. **Blackford**

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1 **Declaration, # 14, Exhibit H to Blackford Declaration**
2 Contrary to Defendants Facts #s 23 and 25 which are not
3 facts but rather conclusions of law.

4 18. In his entry Mr. Curtis refers to someone who over-
5 analyzes things and causes costs to exceed the perceived
6 waste. This person, according to Mr. Curtis, spends "8
7 hours a day posting messages, talking about their
8 perception of problems in the hall (keeping others from
9 their work) and complaining about never having enough
10 funding to get their work done." He later informs his
11 reader that his comments are "aimed at one individual who
12 no longer works at PNNL (thank goodness)." His comment
13 about that person is that, "The cost of firing a person
14 like this amounts to two years direct charges to clients
15 (or overhead), their manager's lost time, project
16 deliverables slipping, and all other PNNL staff who
17 wasted their time engaging in idle chit-chat. For an S&E
18 III this amounts to about \$500 K." **Exhibit H to**
19 **Blackford Declaration Contrary to Defendants Fact # 24,**
20 **25, and 27, which are not facts but conclusions of law.**

21 19. Blackford's job title classification at Battelle Pacific
22 Northwest National Laboratory was Scientist and Engineer
23 III. From the time Earl Heister was assigned to oversee
24 Blackford's Corrective Action Plan (June 27, 1995) until
25 the date he fired Blackford (June 23, 1997) was almost
26 exactly two years. **Blackford Declaration, # 16 Contrary**
27 **to Defendants #s 17, 19, 22, 23, 24, and 25, which are**

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1 not facts but conclusions of law.

2 20. Contrary to Defendant's Fact #16, Blackford has not
3 admitted that all of his allegations of misconduct by
4 Battelle are contained in his two memoranda, dated
5 February 22, 1995, and August 12, 1997. Rather,
6 Blackford referred Defendant in his interrogatories to
7 extensive federal and state common law and statutes
8 prohibiting retaliation for protected activities which
9 are applicable to the treatment of Blackford by Battelle
10 from 1994 through the date of his discharge. Dunwoody
11 Declaration, Exhibit C (Answers to Interrogatories Nos.
12 3 and 1)

13 21. Blackford objects and moves to strike Defendants Facts #s
14 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, and 27 on the
15 ground that they do not state facts; rather they recite
16 conclusions of law with which Plaintiff disagrees.
17 Evidence in this record shows that Battelle management
18 set forth on a purposeful scheme to hinder Blackford from
19 achieving work within the laboratory despite Blackford's
20 successful efforts at overcoming any behaviors that may
21 have previously interfered with his relationships in the
22 workplace. Moreover, that evidence infers that
23 management was motivated by a motive to retaliate against
24 Blackford for being a "troublemaker", that is; opposing
25 discrimination, waste, fraud and mismanagement, and
26 whistleblowing.

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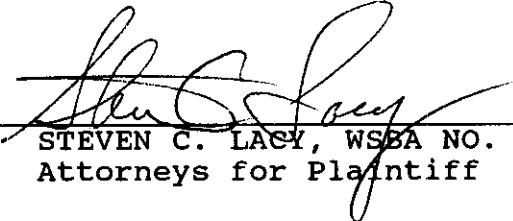
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1 Date this 16th day of March, 1999.
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LACY & KANE, P.S.

5 By 
6 STEVEN C. LACY, WSBA NO. 10814
7 Attorneys for Plaintiff
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EXHIBIT

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1 MR. DUNWOODY: That's right. I
2 believe it's on our privilege log. We of course
3 claim attorney/client privilege, since Steve Porter
4 was the legal counsel at that, so it is an
5 attorney-client privileged occasion.

6 Q. (BY MR. LACY:) Do you claim a
7 privilege, then, in terms of discussing with me
8 anything that was discussed in that meeting, sir?

9 A. Yes, I do.

10 Q. So you intend to keep private
11 everything that was discussed in this meeting about
12 the reasons why to terminate my client? Is that
13 true?

A. I'm going to keep --

15 Q. You're not going to answer my questions
16 concerning what was discussed in this meeting about
17 the reasons why Mr. Blackford should be discharged?

18 A. It's my understanding it's attorney-
19 client privilege.

20 Q. I'm just asking you the question. Are
21 you going to claim the privilege and not tell me
22 anything about what was discussed in that meeting?

23 A. Yes, I am.

24 Q. All right. Was there ever any
25 discussions that occurred outside that meeting

1 wherein the decision-making process was influenced
2 by anything else, or was it influenced by solely
3 the discussion in that confidential meeting?

4 A. The decision to go forward through that
5 process would have been made by the manager
6 involved.

7 Q. Earl Heister?

8 A. Yes.

9 Q. So if I ask you what the considerations
10 were by this group that led to firing my client,
11 are you going to take the position that you're not
12 going to tell me that either because it comes out
13 of the discussion at that meeting?

14 MR. DUNWOODY: Well, look, I
15 formulate the objections on attorney-client
16 privilege here, and we will take questions one at a
17 time and we will give you a ruling on them as you
18 ask them.

19 Q. (BY MR. LACY:) Okay. Here's my first
20 question. What was talked about at that meeting as
21 to the reasons why my client should be fired?

22 MR. DUNWOODY: Objection,
23 attorney-client privilege.

24 Q. (BY MR. LACY:) What reasons were
25 determined to be justification for firing my client

1 at that meeting?

2 MR. DUNWOODY: Same objection.

3 Q. (BY MR. LACY:) Will you tell me
4 anything that was said at that meeting?

5 MR. DUNWOODY: Same objection --
6 Well, I guess you can go ahead and answer that one.

7 Q. (BY MR. LACY:) If you do, I'm going to
8 take the position you are waiving the privilege.

9 MR. DUNWOODY: No. You just asked
10 him, will you tell me anything that was said at
11 that meeting, and I think he can answer that yes or
12 no. I don't think that calls for privileged
13 information.

14 Q. (BY MR. LACY:) Okay. Would you tell
15 me anything that was said at that meeting?

16 A. Not regarding what was discussed in
17 terms of your client.

18 Q. Well, the meeting was solely about my
19 client, was it not?

20 A. Yes, it was.

21 Q. So there will be nothing else to tell
22 me, would you agree?

23 A. I would agree.

24 Q. All right. In my client's termination
25 letter from Battelle a reason is given for his

1 Q. Right. They are above the group
2 managers.

3 A. Right.

4 Q. Who else?

5 A. And the associate lab director.

6 Q. Was there anyone below the group
7 manager level that would be considered a line
8 manager?

9 A. No.

10 Q. Okay. So the lowest level of access to
11 this document you're talking about would be at the
12 group manager level?

13 A. That's correct.

14 Q. All right.

15 A. Or in the H.R. copy, I had a copy of
16 it, of course.

17 Q. Of course. Now, being familiar with
18 the contents of this document and other rules and
19 regulations promulgated by Battelle, was there a
20 policy or regulation or rule that specifically
21 indicated that a person who did not maintain the
22 appropriate level of funding for projects for
23 themselves on projects was subject to discharge?

24 A. Not to my knowledge.

25 Q. Was there anything that you were aware

1 the function, he and I discussed different issues
2 of a human resource nature. And he informed me
3 that there could be a possible problem with Mr.
4 Blackford.

5 Q. Who was that?

6 A. Walt Dascenzo.

7 Q. Was there discussion between the two of
8 you about the possible whistleblower impact of Mr.
9 Blackford's performance issue?

10 A. No.

11 Q. Did you ever discuss with anyone the
12 possibility that there might be a whistleblower
13 issue pertaining to Mr. Blackford?

14 A. Only after -- Well, yes. The answer is
15 yes. But it was after he had filed his
16 whistleblower complaint.

17 Q. I understand that he filed his
18 whistleblower complaint, his initial complaint, --
19 Well, strike that.

20 You're talking about the formal
21 complaint under the CFR, after he was discharged,
22 or sometime prior to that time?

23 A. Oh, it was before he was discharged.

24 Q. I understand that in February, I think
25 it was February 21st of 1995 he wrote a letter to

1 Congressman Hastings and followed that up with a
2 lengthy dissertation about his experiences at
3 Battelle where he alleges certain issues with
4 problems with diversity, problems with retaliation,
5 things like that.

6 Is that what you are referring to?

7 A. Yes. I received a copy of that.

8 Q. He sent you a copy as part of his
9 presentation, so to speak, and distribution of that
10 document?

11 A. Yes. That's correct.

12 Q. So it was at that time that you became
13 aware of the whistleblower issue.

14 A. That's correct.

15 Q. And did you understand that he was
16 doing that as a result of feeling that he was being
17 retaliated against in a performance evaluation
18 setting?

19 A. Well, I don't know that I understood it
20 that way. I understood that he had a whole bunch
21 of complaints, and they were included in there.

22 Q. All right. At that point did you begin
23 to individually communicate with Mr. Blackford
24 about his concerns?

25 A. Mike -- I don't remember. As a result

1 Q. With what?

2 A. With his lack of understanding of the
3 guidance that he was being given by Jan Goolsby on
4 this project.

5 Q. So what you witnessed was just a
6 reaction of frustration, indicating frustration, as
7 opposed to hostility towards somebody, huh?

8 A. No. I think there was some hostility
9 there, too. I think he was very upset and
10 frustrated.

11 Q. Who was he hostile to?

12 A. He did not threaten anyone at that
13 meeting.

14 Q. So he wasn't hostile to anybody in
15 particular, just generally hostile?

16 A. I would say that. He was very, very
17 upset, very agitated. Mike is a very large person.

18 Q. I know Mike. Did he tell you he felt
19 he was undergoing harassment and reprisals of some
20 type during those meetings?

21 A. No. He did not indicate that he felt
22 he was undergoing reprisals.

23 Q. Did he tell you, do you remember him
24 telling you in some memos through the computer that
25 he thought he was involved in a climate of

1 harassment and reprisals?

2 A. Yes. I think Mike felt that way.

3 Q. It looks like he communicated that to
4 you. I am handing you Bates 361 and 362, this
5 document. I have highlighted a couple of those
6 spots for you.

7 (Pause in the proceedings).

8 Q. Does that refresh your recollection
9 about whether he told you he felt he was a victim
10 of harassment and retaliation?

11 A. Yes. Mike was very much feeling that
12 he was being harassed and reprimed against. He
13 said this.

14 Q. Now, apparently there was a suggestion
15 made, actually a request made to Dan Lowe with the
16 HEHF, I keep forgetting what that stands for.

17 A. Hanford Environmental Health
18 Foundation.

19 Q. I figured you would know. There was a
20 request made for a fitness evaluation of Mr.
21 Blackford arising out of this review hearing where
22 you terminated the meeting, correct?

23 A. Correct.

24 Q. Did you support that request?

25 A. Yes, I did. It was my feeling that

1 of that specific letter that he sent, no, I did
2 not. That was being handled at the time I think by
3 the Staff Concerns Office. So I did not work with
4 him directly on those specific complaints at that
5 time.

6 Q. Did you come to ever work specifically
7 with Mr. Blackford in trying to resolve or just
8 deal with him about complaints of his treatment at
9 Battelle?

10 A. Yes, I did.

11 Q. When did that occur? When did you
12 first begin to work with him?

13 A. When his supervisor, Jan Goolsby, put
14 him on an improvement required performance rating,
15 which necessitated the development of a career
16 development plan, improvement plan.

17 Q. Was there a written policy or some
18 written protocol that required that?

19 A. Yes, there was.

20 Q. And was that like a policy in the human
21 rights department?

22 A. Human Resources Department, yes.

23 Q. Excuse me. Human Resources
24 Department. Did you consult with Mr. Goolsby about
25 the propriety of putting Mr. Blackford on an I.R.

1 good idea?

2 A. I did not object to it.

3 Q. You didn't tell him you thought it was
4 a good idea?

5 A. I thought it was appropriate.

6 Q. What specific input did you have in to
7 the decision to discharge Mr. Blackford?

8 A. I was a part of the review process, and
9 we have a particular review process which uses a
10 personnel action review committee to review any
11 particular discharge situation. I was a part of
12 that. I was on that Park Committee. I consulted
13 with Mr. Heister and his boss prior to that on the
14 appropriateness of this action.

15 Q. His boss, being?

16 A. Who's boss?

17 Q. You said you consulted with Mr. Heister
18 and his boss, and I am saying his boss being who?

19 A. His boss was Jerry Work.

20 Q. So explain to me now the process that
21 actually was gone through for this decision to be
22 made to fire my client.

23 A. The Park Committee is a committee that
24 is established by policy of Battelle, and it is a
25 recommending committee, recommending body. It's

1 composed, the people that attend Park is the Level
2 I manager, who is Jerry Work; Earl Heister, who was
3 the line manager; myself; another Level I manager
4 not associated with the individual. The human
5 resources director normally chairs it. Affirmative
6 action people are there, or EEO. And legal
7 counsel. And this body reviews the situation and
8 makes a recommendation to the Level I manager.

9 Q. Who's the Level I manager in this
10 situation?

11 A. Jerry Work.

12 Q. So the people that were participating
13 in this particular decision as far as you recall
14 were Jerry Work, Earl Heister, yourself, somebody
15 from the EEO, and legal counsel?

16 A. The human resources director chairs
17 that group.

18 Q. So who was that?

19 A. I don't know if that was John Hirsch at
20 the time or Paula now Lenon.

21 Q. Was there a record made of that Park
22 Commission meeting?

23 A. Was there a record? Yes.

24 MR. LACY: For the record, I have
25 not received anything in discovery --

EXHIBIT
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[MAHAN]-

1 possibly the exclusion of the janitors and maybe some of
2 the carpenters -- really has, is engaged at some point
3 in the contracting process, whether it's to make a
4 presentation, to help write a proposal, to completely
5 write a proposal, or whatever. So it's very difficult
6 to explain, but it is definitely a distributed
7 responsibility that everyone is aware of.

8 Q. All right. When you say it's difficult to explain,
9 actually, that will lead into the next question I'm
10 going to ask you, and that is, is it explained or set
11 forth, this responsibility that everybody has to engage
12 in procurement activities, somewhere within the policies
13 or the written guidelines or in some fashion in writing
14 within PNL?

15 A. I guess I'd have to honestly say I don't know. I mean,
16 I have been there so long, there have been so many
17 models associated with developing business, that what
18 I've told you is my impression of how the company
19 actually works.

20 Q. Sure. After a while, when you've been in a place so
21 long, you no longer go look up the rules because you've
22 been doing it so long it's second nature?

23 A. That's true.

24 Q. All right. I'm interested in this more because my
25 client wasn't a long-term employee of PNL, coming to

[MAHAN] -

1 work in August of 1992 and leaving there in August of
2 1997, so five, approximately five years. Can you think
3 of some source that a person such as Mr. Blackford would
4 have had in order to be able to actually review the
5 rules, regulations, or guidelines that might be in
6 effect at PNL when it comes to procurement of funding
7 sources? In other words, where could he have gone as a
8 new employee to have determined what those rules were
9 with respect to his responsibilities for procurement?

10 A. Right. Good question. If I had a new employee sitting
11 in front of me today, besides verbally telling them what
12 to do, one, I would as a manager be prepared with a set
13 of briefing materials for that employee and a checklist
14 of things I should tell that employee. I've not done
15 that in so long, I have no idea -- well, in fact, I
16 honestly don't know if it still exists, but it did exist
17 at one time.

18 Q. These briefing materials that you are referring to that
19 you utilized with an employee, are they materials that
20 you would prepare or something that was already --

21 A. No. They would be prepared out of the Human Resources
22 organization.

23 MR. DUNWOODY: And Bob, you need to make sure
24 you let him finish his question before you start
25 answering.

[MAHAN] -

1 receiving a memo like that?

2 A. Absolutely the best of my knowledge, I never received
3 that memo. I never received anything in writing with
4 that kind of an allegation.

5 Q. You can rest a minute. It might take me a while to find
6 what I'm looking for.

7 MR. DUNWOODY: I'm looking for it too. Let's
8 go off the record here.

9 MR. LACY: Yeah.

10 (AN OFF-THE-RECORD DISCUSSION WAS
11 HELD.)

12 Q. (By Mr. Lacy) You apparently are looking at a document
13 that purports to be an E-mail, I guess it purports to be
14 an E-mail, copy of an E-mail dated April 9, 1997. Does
15 that equate with what I think you are looking at?

16 MR. DUNWOODY: Just to make the record clear,
17 what he's looking at is production Nos. JMB 308 through
18 309.

19 Q. All right. That's probably a good way to look at it.

20 This appears to be addressed to somebody named
21 Bob. You are saying that's either not you or this
22 wasn't sent to you. Is that your recollection?

23 A. My recollection is I received no E-mail from Mike
24 Blackford on this subject.

25 And I guess I would say one more thing, is

[MAHAN] -

1 this thing looks just fishy as the devil. Every other
2 E-mail I got from Mike in the header had: To, my name,
3 the date, and the subject. I don't understand why this
4 does not have the "to me." Everything else he ever sent
5 me does, and I think the material you have will bear
6 that.

7 Q. Well --

8 A. I mean, if I didn't recall receiving this, I wouldn't
9 even have looked to see what the header looked like, but
10 there's something wrong with this message.

11 Q. I hear what you are saying, and what I'd like you to do
12 is kind of stick with your answers to the questions that
13 I ask; not that the information you give me is not
14 relevant, but it just goes in a different direction than
15 where I wanted to go.

16 A. Fine.

17 Q. All right. Did you or did you not ever become aware
18 from any source that Mr. Blackford had discovered what
19 he thought were some discrepancies in the budget
20 forecast figures in connection with this UNICALL in the
21 spring of 1997?

22 A. Yes.

23 Q. When did you first find out about that?

24 A. It would have been in this time period. I couldn't put
25 an exact date on it, but it would have been in this time

[MAHAN] -

1 little bit, but I believe the number of employees stayed
2 pretty constant.

3 Q. And what was the specific job responsibility assigned to
4 you as manager of strategic programs at that time?

5 A. I was responsible for the IMS support staff -- and that
6 really should be IMS staff because it's Information
7 Management Support staff.

8 Q. So you are responsible for the IMS?

9 A. Right. I was responsible for all long-range planning.

10 Q. And this is planning with respect to the internal
11 computers at the lab?

12 A. Yes.

13 Q. Okay.

14 A. I was responsible for the DOE, Department of Energy
15 interface.

16 Q. And that you are going to need to explain to me.

17 A. Right.

18 MR. DUNWOODY: But have you finished your list
19 of what your responsibilities were?

20 A. Yes.

21 MR. DUNWOODY: All right.

22 Q. Even if you hadn't, I was going to have you explain to
23 me before you went to the next step, but go ahead.

24 A. It's really complicated. I was responsible for any
25 reporting to DOE -- well, let me back up a moment. With

[MAHAN] -

1 regard the DOE interface, with regard to computing and
2 telecommunications, restricted to those two areas.

3 Q. So that implies there was someone else that would be
4 responsible for interfacing with DOE with regard to
5 other issues?

6 A. Facilities, power, whatever.

7 Q. Whatever?

8 A. Yes.

9 Q. Okay.

10 A. That included producing what I would consider to be
11 regular and ad hoc reports at their request, preparing
12 the annual DOE plan, approving the acquisition of
13 computing equipment, coordinating any external reviews.
14 That would include the Department of Energy, the
15 Inspector General, General Services Administration,
16 whoever had the legal right to provide oversight to the
17 laboratory.

18 I also maintained credibility with the local
19 DOE office and headquarters staff in computing, and that
20 probably covers it.

21 Q. Okay. It's not like it wasn't enough?

22 A. It's sort of when DOE asks, I'm the guy that figures out
23 how to respond.

24 Q. As it relates to computers and telecommunications?

25 A. Yes. Yes.

[MAHAN] -

1 Q. Okay. Tell me what the DOE plan that you are talking
2 about was.

3 A. There's an annual plan that at that time was mandated by
4 congress, or at least the DOE interpretation of it was
5 that it was mandated by legislation, and it was a rollup
6 of the cost of computing in the laboratory. That got
7 rolled up by DOE and presented to OMB, and OMB presented
8 it to congress.

9 Q. Does this have something to do with the term UNICALL?

10 A. That was a later term.

11 Q. For the same thing?

12 A. No. The UNICALL is a superset of that. This was
13 primarily to produce information related to the budget
14 year. Now, in the federal government, the year we're
15 working on that budget is like three years ahead of us,
16 and it's sort of for DOE to be able to report to
17 congress here's what DOE thinks they're going to spend
18 on computing, and it's simply a forecast. And you might
19 well imagine, at that level it is really a forecast. I
20 mean, it's sort of throw something on the wall. It is
21 not a budget of any kind.

22 Q. How does that differ from the UNICALL?

23 A. It was integrated -- it previously was a completely
24 separate report, had no connection with the UNICALL
25 whatsoever, and the UNICALL did exist. They were merged

[MAHAN] -

1 Q. And who took over that?

2 A. It was dissolved.

3 Q. It was dissolved. So just to try and stay on this
4 subject for a moment, in I believe the spring of 1997
5 there was some work done by Mr. Blackford with respect
6 to this forecasting function.

7 A. Yes.

8 Q. And were you the one who assigned him that work?

9 A. Yes, I was.

10 Q. And then you would have been his primary overseer with
11 respect to that work?

12 A. Yes. I had project management responsibility, yes.

13 Q. Okay. I want to come back to that issue later, but for
14 now I just want to get the players straight. All right?

15 A. Sure. Yes.

16 Q. The reporting function to DOE was important because they
17 were your -- at least one of your primary funding
18 sources; is that a true statement?

19 A. That's true.

20 Q. If they became dissatisfied in some fashion with the
21 services that they were receiving, that could impact the
22 budget of PNL?

23 A. Yes. Well, maybe I should retract that. I can't -- you
24 can certainly make that conjecture and I would believe
25 it. I have no evidence of that.

[MAHAN] -

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22 budget of PNL?

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24 can certainly make that conjecture and I would believe
25 it. I have no evidence of that.

[MAHAN]-

1 Q. You weren't a party to exactly what the numbers were?

2 A. Right.

3 Q. And how much of the money came from DOE as compared with
4 other sources; is that what you are saying?

5 A. No. I had a general knowledge of that. But what I
6 really want to say is my primary job was to make sure
7 that DOE viewed us as a highly credible national
8 resource in computing and telecommunications. If they
9 did not view us as that they got to be very, very
10 heavy-handed, and we'd fill out three times the number
11 of reports, and so on and so forth. So it was very
12 important that DOE trusted us enough to give us a free
13 hand in doing what we felt we needed to do in computing.
14 So that was the real driver on me.

15 Q. That's where you felt the pressure in terms of that
16 aspect of your job, correct?

17 A. Yes.

18 Q. Well, let me stay with this for a moment, then. I
19 didn't want to cover this right now. My mental process
20 was different. But I think it makes sense to do it now.

21 A. Okay.

22 Q. In the spring of 1997, Mr. Blackford prepared and sent a
23 memo, I believe, to you outlining what he thought were
24 some potential discrepancies in the budget forecasting
25 data that he had been looking at. Do you recall that,

[MAHAN] -

1 Q. When you went to work for Battelle, was the entity that
2 you presently work for already known as Pacific
3 Northwest National Laboratories?

4 A. No. At that time it was called by various names,
5 Battelle Northwest, Pacific Northwest Division of the
6 Battelle Memorial Institute, and Pacific Northwest
7 Laboratory.

8 Q. Now, this is purely educational for me, so this is what
9 I need to have you try to explain to me. What is the
10 business of this entity that you went to work for in
11 1967, which is now known as Pacific Northwest National
12 Laboratories?

13 A. Yes. First I'll take the business the Battelle Memorial
14 Institute. Battelle Memorial Institute, our parent
15 company, is a -- I'm not sure what the correct legal
16 term is. It's either a nonprofit or not-for-profit
17 independent research laboratory. Essentially, we have
18 no stockholders but we are a tax-paying entity, income
19 tax-paying entity.

20 Pacific Northwest Laboratories is a division
21 of the Battelle Memorial Institute. That division holds
22 two contracts with the federal government, a contract
23 called the 1830 contract, which is for the operation of
24 the part of the Hanford site to perform research and
25 development for the Department of Energy; there's an

[MAHAN] -

1 1831 contract that is what is a use permit, that allows
2 the company to use government facilities, remunerating
3 the government for those facilities and for the use of
4 those facilities, and do work for other federal
5 agencies, private companies, or individuals.

6 Q. So let's see if I understand this. The 1830 contract
7 that you hold with DOE basically provides funding for --
8 can I call it PNL?

9 A. Yes, that's fine. That's colloquially -- well, the
10 "national" came in on an active basis several years ago,
11 but there are many people who still call it Pacific
12 Northwest Labs or Pacific Northwest National
13 Laboratories, yeah.

14 Q. For ease of language, I'm just going to say PNL.

15 A. That's fine. I occasionally do it myself.

16 Q. All right. This 1830 contract essentially, then,
17 creates a funding source which is the Department of
18 Energy?

19 A. Yes.

20 Q. And the 1831 contract is an enabling contract that
21 allows you to have funding sources which are outside
22 funding sources?

23 A. Yes. Now, there's one intermediate. Any other federal
24 agency can contract with us either under the 1830 or the
25 1831 contract. If it's under the 1831 contract, it's

[MAHAN] -

1 deposition that I hadn't had a chance to fully review.

2 A. Uh-huh.

3 Q. And it's a file that you provided to counsel for
4 Battelle for today's deposition, correct?

5 A. Uh-huh.

6 Q. Was this a file maintained by you personally?

7 A. Yes.

8 Q. And in the file, as I began to look at it, just the
9 first page it contains a document, the first line of
10 which says, quote: Contents of documentation file on
11 Mike Blackford.

12 Is that how you denominated this file,
13 documentation file on Mike Blackford?

14 A. At the time that was written, yes.

15 Q. All right.

16 A. It now has more in it than that.

17 MR. DUNWOODY: And I'd like you to -- that
18 document was produced to you as BMI 599 through 602.

19 MR. LACY: Are you telling me that this was
20 part of the prior disclosures?

21 MR. DUNWOODY: That's what I'm telling you. A
22 lot of what's in that file is part of prior productions.

23 MR. LACY: All right. Actually, I wasn't
24 taking issue with that. That wasn't important to my
25 question.

[MAHAN] -

1 Q. (By Mr. Lacy) This document is dated November 10, 1993.
2 Is that the date that you created the document that
3 counsel just referenced?

4 MR. DUNWOODY: Well, I don't think he has
5 seen -- if you want to show him that document, that's
6 fine. You can ask him about that.

7 MR. LACY: Well, that's what I was doing,
8 counsel, was asking him about the document.

9 MR. DUNWOODY: Well, you were asking what I
10 just referenced, and I think you ought to show him that
11 one, because I don't think he can say he's seen a
12 document with those production numbers on it.

13 Q. (By Mr. Lacy) Well, let me show you this document that
14 I have described as the contents of documentation file
15 on Mike Blackford.

16 A. Right.

17 Q. And it appears to be a numbered list of some kind.

18 A. Right.

19 Q. Of contents of a file.

20 All right. Is the file that you turned over
21 to counsel for Battelle today, the one that was provided
22 to me this morning, is that the documentation file on
23 Mr. Blackford or does that have reference to some other
24 file?

25 A. No. This refers to that file, but things have been

[MAHAN] -

1 added to that file since this date.

2 Q. Since November 10, 1993?

3 A. Yes.

4 Q. All right. So that we're clear on this, the file
5 denominated documentation file on Mike Blackford which
6 you provided to counsel for Battelle today and was
7 provided to me today was maintained by you exclusively?

8 A. Yes.

9 MR. DUNWOODY: He provided it to me yesterday,
10 not today.

11 MR. LACY: All right. I think the record will
12 reflect that.

13 Q. (By Mr. Lacy) Now, did anyone, had anyone at Battelle
14 asked you to maintain a documentation file on Mike
15 Blackford?

16 A. No.

17 Q. Why did you do that?

18 A. It was very clear that -- good management says if
19 anybody gets in enough trouble, that they are potential
20 candidates to be fired. It better be well documented.
21 And by this time it was very clear to me that Michael
22 had alienated a great number of people and that I had
23 better at least try to put what information I had in
24 some kind of order, and that's what I did.

25 Q. At the time that you did that in November of 1993, were

[MAHAN] -

1 you involved with Mr. Blackford directly as his
2 supervisor?

3 A. No, I should not have been by then. He should have gone
4 on to Goolsbey by that time.

5 Q. Did you have any discussion with anyone else in the
6 workplace about the need for you to put together this
7 file or organize documentation that you had on Mike
8 Blackford?

9 A. I've had general discussions. I don't recall if I had
10 an explicit discussion. I had general discussions with
11 HR people. HR people in this case would be Linda
12 Matheson. And Linda Matheson was always a stickler for
13 if you have problems with any staff that are going to be
14 associated with not getting good salary increases or
15 getting no salary increase or possibility of discharge,
16 you'd better have the file well documented for that, and
17 this was in that context. Linda may or may not have
18 told me: Mike's in trouble. You ought to do it. You
19 ought to get the documentation squared away. I can't
20 honestly --

21 Q. Did you feel an obligation in some fashion to the Human
22 Resources Department to document issues with respect to
23 Mike Blackford in some capacity other than as a line
24 manager?

25 A. No, I don't. No.

[MAHAN] -

1 Q. You were not his line manager at the time that you began
2 this documentation project, correct?

3 A. That's right.

4 Q. Have you ever begun a documentation file on any other
5 employee at Battelle that you weren't directly involved
6 in supervising?

7 A. No. But understand in this case, I was involved
8 directly in supervising him. This documentation listing
9 covers the events when he was under my supervision.

10 Q. It also covers events when he was no longer under your
11 supervision, correct?

12 A. Well, when I decided to do it, I just took the whole
13 file and wrote it, and I cannot tell you whether it
14 covers events that were -- well, certainly I can tell
15 you that, because it had the original job description
16 that Lee Ann handed me, so it certainly had stuff from
17 before he worked for me. I can't tell you whether it
18 had stuff after. The file that I turned over did
19 because Mike made some things available to me, and I
20 just stuck them in the file and I did not list them or
21 attempt to interpret them.

22 Q. Did you ever tell Mr. Blackford that you were
23 maintaining a documentation file on him independent of
24 the Human Resources Department?

25 A. No.

[MAHAN] -

1 Q. Is there any policy or directive that you'd ever
2 received in writing from anyone at PNL telling you that
3 it was your responsibility to document or create
4 independent files on employees for disciplinary
5 purposes?

6 A. I'm not sure what you mean by independent files other
7 than --

8 Q. I'm referring to this file as an independent file; for
9 example, independent from his personnel file that would
10 relate to his performance at Battelle.

11 A. No.

12 Q. Do you know of any written or unwritten policy at PNL
13 that would have required you to do this?

14 A. No.

15 Q. Did you do it out of some sense of loyalty to PNL?

16 A. I did it out of self-interest, so I would have a record
17 of what I had in there and what I thought had gone on.

18 Q. What sense did you feel a need to do this out of
19 self-interest?

20 A. Well, simply I think it's good management practice to
21 keep -- I do not keep a logbook of my daily activities
22 like they do in the White House, but I thought enough
23 had gone on that it just might be a bright thing to do,
24 to write down what I knew about events that had
25 occurred.

EXHIBIT
3

1 Q. Now, did you and Mr. Heister also have
2 contacts on a social level in addition to your
3 contacts with him on the job, you know, on a
4 professional level?

5 A. Yes. We went hunting, deer hunting, on
6 maybe three occasions.

7 Q. These are like trips to some other
8 geographic location?

9 A. Yes. North of Spokane.

10 Q. Okay. And then on those occasions I
11 assume you camped out or took a trailer or
12 something?

13 A. Yes.

14 Q. And your stays lasted, what, several
15 days on each occasion?

16 A. We normally left on Friday and came
17 back on Sunday.

18 Q. Shoot anything?

19 A. I didn't, no.

20 Q. Did those three occasions occur in
21 three successive years, three successive hunting
22 seasons?

23 A. No. Actually, they were all in the
24 same season, I believe. Yes, that's true.

25 Q. And do you recall what year, what

1 season that was?

2 A. I believe it was '97.

3 Q. So we're talking about the winter
4 of '96-'97? I assume the deer season occurs in the
5 wintertime.

6 A. Yeah. I'm not sure if it was in the
7 fall of '96 or the fall of '97.

8 Q. Okay. Was there ever any discussion
9 about your deer hunting trips with Mr. Heister that
10 involved Mr. Blackford?

11 A. Yes.

12 Q. And what do you recall about that?

13 A. I initiated that, and asked him if he
14 had found work for Mr. Blackford or what the
15 situation was.

16 Q. All right. So this would have been
17 during the course of your interaction on the
18 hunting trip?

19 A. It was on the ride up.

20 Q. On the ride. All right. Since Mr.
21 Blackford left Battelle before the fall of 1997,
22 does that help refresh your recollection as to when
23 this trip might have been?

24 A. No. Because it may have been after he
25 left and I just asked if, you know, he had ever

1 question for you is, did you compose that language?

2 MR. DUNWOODY: Are you referring to
3 the bold language on Exhibit 3?

4 MR. LACY: I'm referring to both,
5 because they both contain the same language.

6 MR. DUNWOODY: Well, Exhibit 3 has
7 a paraphrase in bold, of some of the language in
8 Exhibit 2. And there is also other language on
9 Exhibit 3 that seems to be describing the bold
10 language. So I think you need to be clear about
11 what text you are asking about.

12 Q. (BY MR. LACY:) May I see Exhibit 3.
13 I'm certainly not trying to be unclear.

14 All right. Let's use Exhibit Number
15 3. On Exhibit Number 3 there is some language that
16 is in bold.

17 Do you see that?

18 A. (Witness nodded affirmatively).

19 Q. There is some other language that is
20 not in bold.

21 A. Yes.

22 Q. My question for you is, looking only at
23 the language which is in bold, did you compose that
24 language.

25 (Pause in the proceedings).

1 MR. LACY: All right. I will
2 accept that correction.

3 Q. What was the basis of your knowledge
4 that Mr. Blackford ever spent eight hours a day
5 engaging in the activities of posting messages,
6 talking about perceptions of problems in the hall-
7 and complaining about never having enough funding
8 to get his work done?

9 A. My first-hand knowledge of observing
10 Mr. Blackford in our building either out back,
11 smoking cigarettes, talking to people, in other
12 people's offices, talking to them, keeping them
13 from their work, and always complaining about never
14 being able to find enough funding, and not having
15 work.

16 Q. Did you ever observe Mr. Blackford over
17 an eight-hour period?

18 A. Do you mean constantly walking behind
19 him?

20 Q. Enough so that you would know that he
21 spent eight consecutive hours at any time doing
22 those activities that you talked about.

23 A. I would come to work in the morning and
24 see him out back smoking. I would walk by an hour
25 later and see him still out smoking, still talking

1 to the same person. I would see him in people's
2 offices in passing, conversing, come back an hour
3 to two hours later, and him still being there.

4 And the reason I have first-hand
5 knowledge of that is because I would walk in and
6 talk to the other person, the other office mate,
7 and ask them, "Has this person been here the whole
8 time?" And them replying, "Yes."

9 So I do have first-hand knowledge of
10 this individual, Mike Blackford, wasting a
11 considerable amount of time during any given day.

12 Q. My question again for you is did you
13 ever observe him consistently enough over an
14 eight-hour period to be able to be confident that
15 he had done that for a full eight hour period?

16 A. No.

17 Q. By the way, were you ever aware of any
18 instructions given to Mr. Blackford to spend time
19 talking to people in order to try to obtain funding
20 for projects?

21 A. Can you repeat that, please?

22 Q. Did anyone ever tell you that Mr.
23 Blackford had been instructed at any time to
24 actually spend time conversing with people in an
25 attempt to get funding, project funding for

1 himself?

2 A. I believe I had a conversation with Mr.
3 Heister, and he led me to believe that he had
4 instructed Mike Blackford that he needed to find
5 his own work or he would be let go. And that Earl
6 would work for a year with him to help him find
7 work. But after that he was on his own. And if he
8 couldn't find work in another year, he would be let
9 go.

10 Q. Mr. Heister gave you this information
11 toward the beginning of this process, at the
12 beginning of this first year so that you would know
13 that Mr. Blackford was on this program? Is that
14 true or untrue?

15 A. I do not recall exactly when Mr.
16 Heister gave me that information. It may have been
17 after Mr. Blackford was let go, it may have been
18 during the discussion that he had with me on trying
19 to get work for Mr. Blackford.

20 Q. You can't recall whether or not it was
21 before or after Mr. Blackford departed from
22 Battelle?

23 A. No.

24 Q. Would it have made any difference to
25 you in your observations of Mr. Blackford, going

1 around, spending all day talking to people, if you
2 had known that he was under a program that required
3 him to go around and talk to people to try to get
4 funding for projects?

5 A. Well, the problem was partially that he
6 ~~was talking to people that had no funding or any~~
7 work source to give him funding.

8 Q. How do you know that?

9 A. Because the person that he routinely
10 conversed with was not a project manager or -- They
11 were just a worker.

12 Q. You weren't a project manager when Mr.
13 Heister came to you and asked you if you had work
14 for Mr. Blackford, were you?

15 A. I do not recall.

16 Q. I think you testified earlier today
17 that you think you might not have been.

18 A. I may not have been. That's true.

19 Q. So it wasn't only project managers that
20 had work for people, was it, sir?

21 A. No.

22 Q. In the --

23 A. Can I go on the record and say --

24 Q. You can say whatever you want in
25 response to my question. So if this is responsive

1 Q. Did you ever hear that she was upset or
2 concerned about the amount of time that Mr.
3 Blackford spent speaking with her?

4 A. No.

5 Q. Your next statement in this, what did
6 we call this, it is not an E-mail?

7 A. A news posting.

8 Q. A news posting. It's done with a
9 computer and you sent it into a distribution --

10 A. Yes.

11 Q. -- to other employees, correct?

12 A. It's a bulletin board system.

13 Q. Like a chat room on the Internet,
14 except with a smaller distribution?

15 A. No.

16 Q. No? Okay. Well who has access to this
17 when you send these things out on the PNL
18 Biz.letstalk?

19 A. Anyone that wants to read. Anyone at
20 Battelle that subscribes to that news group will be
21 able to read it. It's just as if you were walking
22 down the hall and were looking at a bulletin board
23 all the time. You would have to make that effort
24 to go read it.

25 Q. You would basically punch up PNL Biz

1 dot Let's Talk on your computer and see what was
2 there?

3 A. Yes.

4 Q. And to your understanding what
5 percentage of employees at Battelle have the
6 practice of participating in this PNL dot Biz dot
7 Let's Talk?

8 A. It's impossible for me to know that.
9 Thousands of people could read it and you'd never
10 know it. But whoever posts, whoever comments,
11 whoever replies to a message, that's the only way
12 you can tell if they are actually participating, or
13 if they are just reading.

14 Q. Is there any prohibition that you are
15 aware of at Battelle about spending time during
16 work hours posting messages on this bulletin
17 board?

18 A. No. This forum was established to
19 allow staff to have an open forum to openly
20 communicate about problems or good things or
21 whatever.

22 Q. Like a stress reliever?

23 A. I'm not sure if that was the intent.
24 It was mostly to give people an opportunity to
25 voice their opinion.

1 Q. Sound off if they wanted to?

2 A. Yes.

3 Q. So if someone used this process to
4 sound off and complain, it wasn't considered
5 inappropriate?

6 A. No.

7 Q. So, if Mr. Blackford used it to sound
8 off and complain, it wouldn't be considered
9 inappropriate just because he was complaining or
10 because there was negative tone to his comments?

11 A. Sarcasm and exaggeration are typically
12 apparent in these postings. And this reply was to
13 Dwight for his sarcastic and negative comments
14 about a very positive thing.

15 Q. You have, I take it, a recollection of
16 the context of this communication?

17 A. Yes.

18 Q. What was it that Mr. -- What was
19 Dwight's name? Mr. Hughes?

20 A. Dwight Hughes, yes.

21 Q. What was it that he had said that had
22 prompted this response on your part?

23 A. The Battelle Staff Association, which
24 is BSA, routinely has, they used to call them
25 attitude adjustment parties. They called them pizza

1 parties or something like that. And they had a big
2 party for all staff, whoever wanted to attend, to
3 attend at this pizza function -- or maybe it wasn't
4 a pizza function, maybe it was a cookout,
5 hamburgers and hot dogs type outing at the Battelle
6 park. I'm not sure what it's called. By the
7 tennis courts.

8 And Dwight was upset because it was on
9 a Friday, and his kids had -- he had obligations
10 with his kids, and he felt it was more appropriate
11 that the staff association distribute pizzas to all
12 the buildings so that everyone could partake in
13 this, because these funds are collected from, I
14 don't know where the funds come from for this,
15 whether it is Battelle internal or wherever, but he
16 felt that he didn't get his share of the fund, and
17 because he had obligations, he couldn't make it.

18 So there were responses back that said,
19 you know, that you had the opportunity to come and
20 you had other choices that you made.

21 His complaint that the staff
22 association should go out of their way and make it
23 available in every person's building didn't hold
24 water because not all staff in every building would
25 be able to come to the function anyway.

1 And in addition, one of the purposes, I
2 feel, about the parties is to get people together
3 from different organizations so that they can
4 network, communicate and in a sense build working
5 relationships that would not normally be
6 established. And it gives us the opportunity to
7 see people that we haven't seen for years.

8 Q. All right. So you responded to him
9 with this example of Mr. Blackford's waste because
10 you wanted to give an example of somebody who, like
11 Dwight, had spent more time analyzing the problem
12 than it was worth.

13 Is that a fair statement?

14 A. Yes.

15 Q. All right. Earlier in my questions to
16 you you had said that you didn't have a
17 recollection of problems with Mr. Blackford's
18 personal behavior, other than his wasting time and
19 things like that.

20 Does this refresh your recollection
21 that you had some concerns about some other aspect
22 of his behavior?

23 A. I'm not sure I follow.

24 Q. For example, his propensity to
25 overanalyze a problem to the point that it made it

1 cost inefficient.

2 A. I'm not sure how to answer that. Since
3 he was always complaining about things. I can
4 conceive of complaining as analyzing. When I
5 complain about something, it's normally because
6 I've analyzed it enough to figure out there's a
7 problem with it. But if you overanalyze something,
8 you're just spinning your wheels.

9 Q. By that time, in September of 1997, had
10 you already gone on your hunting excursions with
11 Mr. Heister?

12 A. I'm not sure.

13 Q. Assuming that you had not, since you
14 think you might not have, what would have been the
15 source of your understanding that Mr. Blackford had
16 a propensity to overanalyze to a cost inefficient
17 extent in the workplace?

18 A. The meetings that we had for project
19 kick-offs, Mike tended to overanalyze problems.
20 Instead of focusing on the problem in terms of how
21 to solve it, he would just focus on the problem.

22 Q. Now, your next statement that you make
23 here, and I'll quote it, is, "Some of these people
24 no longer work at PNNL now that it only takes two
25 years of record keeping (and not an act of

1 Congress) to fire them."

2 Was that a reference to Mr. Blackford?

3 A. No, not specifically. It was a
4 long-standing joke of mine. Early on at Battelle
5 it didn't really matter what you did. To get fired
6 seemed like it took an act of Congress. And we
7 joked about that because a lot of our budgets come
8 from Congress. And so some of the bigger projects
9 are actually line items on Congressional committee
10 forms. And so we have to have Congress' support to
11 get the project off the ground.

12 Q. Your next statement was, "The cost of
13 firing a person like this amounts to two years
14 direct charges to clients (or overhead), their
15 managers lost time, project deliverables slipping,
16 and all the other PNNL staff who wasted their time
17 engaging in idle chitchat. For an S & E III this
18 amounts to about \$500K," which you would agree
19 means \$500,000.

20 A. Yes. I would agree that that \$500K is
21 \$500,000.

22 Q. All right. Is that statement about Mr.
23 Blackford?

24 A. Partially. Partially to another
25 person.

1 Q. What was it referring to as far as -- I
2 mean, in what way was it referring to Mr.
3 Blackford, what portion of it?

4 A. This is my response to Dwight Hughes'
5 overanalyzation of a situation, and this is my
6 overanalyzation of how much it would cost to fire a
7 person, assuming that they did nothing but waste
8 eight hours a day posting messages, talking about
9 their perception of the problem, and keeping other
10 people from their work, and just complaining about
11 everything.

12 So, given those, we are scientists,
13 most of us that discuss this, so we assume certain
14 things. Given those assumptions, if you take a
15 person's chargeout rate, which of an S & E III is
16 approximately a hundred dollars an hour, and we
17 work approximately 50 weeks out of the year times
18 40 hours a week, amounts to 2,000 hours, which at a
19 hundred dollars, I'm not sure I'm doing the math
20 right, but taking their direct time and their
21 chargeout rate plus their manager's lost time,
22 having to deal with them several hours a week, and
23 taking into account that project deliverables would
24 be slipping because this person wouldn't be pulling
25 their weight, and then all of the other PNNL staff

1 that are affected by this person would also make
2 their deliverables slip, this was an estimation
3 that I came up with on how much it would cost to
4 get rid of this person over a two year period of
5 time, assuming that they never made any progress.

6 Q. Was it also your assumption that you
7 would need to go through a two-year period of
8 record keeping in order to effectuate your intent
9 of discharging this person?

10 A. My understanding is that if a person
11 does not pull their weight and they do not meet
12 these expectations, that management is put in a
13 position that they have to follow some course of
14 action to either help this staff improve their
15 performance to the point where they're no longer
16 having to be hand held, or at some point in the
17 future if the staff does not improve their
18 performance, management has no other choice but to
19 let them go because he can't find work for them.

20 Q. Would you agree with me, Mr. Curtis,
21 that the implication of what you wrote here is that
22 there would be an attempt to spend two years going
23 through the process of record keeping in order to
24 accomplish the purpose of firing the person?

25 A. I don't think the purpose of keeping

1 the records is with the intent to fire the person.
2 I think keeping the records is the intent on
3 helping the person through the process and
4 recording the process.

5 Q. And just so we're clear, you don't
6 think that the implication that I just described is
7 present in what you wrote?

8 A. I'm sorry. I didn't follow that.

9 Q. I said you don't think that the
10 implication that I was just talking about, the
11 implication that you were starting out doing record
12 keeping for two years in order to achieve the
13 discharge of the person, is present or made by the
14 language that you wrote?

15 A. Again, this posting was an
16 exaggeration --

17 Q. I think you can answer that question
18 yes or no. You either think it is present and
19 implied there, or you don't.

20 A. I'm not sure I understand what you're
21 really asking me, sir.

22 Q. I want to know, you're the author of
23 this, as you look at it and you read it, do you
24 agree that the implication from the language
25 objectively there is that a record keeping for two

1 years is being done in order to achieve the
2 objective of firing someone?

3 A. My intent was to exaggerate that it no
4 longer takes an act of Congress but managers have
5 to do their job and do record keeping and go
6 through a process that's two years long to try to
7 help a person to keep from getting fired, but at
8 the end of the two year period the record keeping
9 is basically their defense for firing a person.

10 Q. Again, when you say it only takes two
11 years of record keeping to fire them, you disagree
12 that that implies that the purpose of the record
13 keeping is to fire them?

14 A. Well, the problem I'm having is that
15 this was written in a flippant and sarcastic and
16 negative tone. So therefore it can imply anything
17 negative that you try to read into it.

18 Q. You were the author, sir.

19 A. I was the author.

20 Q. My question now is, wasn't it your
21 intent to imply that the purpose of the two years
22 of record keeping was to fire the person involved?

23 MR. DUNWOODY: And I think he's
24 already testified as to what his intent is. So I
25 object that it's been asked and answered.

1 MR. LACY: That's a good objection,
2 but not the rest of it.

3 Q. You get to answer it again. Are you
4 telling me that it was not your intent to imply
5 that the two years of record keeping on this
6 unidentified person was for the purpose of firing?

7 A. I'm not sure that was my intent.

8 Q. All right. Now, you say in the last
9 sentence there, "For an S & E III this amounts to
10 about \$500,000."

11 Why did you use the term an S & E III
12 in that context, sir?

13 A. Because the chargeout rate for an S & E
14 III is around a hundred dollars an hour.

15 Q. Why did you choose an S & E III for
16 your calculation as opposed to some other employee,
17 like an S & E IV, an S & E II, an S & E I or a
18 project manager?

19 A. Because I believe Mr. Dwight Hughes and
20 Mr. Bill Richmond are both S & E IIIs.

21 Q. Were you implying that one of them
22 ought to be considered in light of these comments
23 of yours for potential discharge?

24 A. No. What I was implying, that an S & E
25 III makes about a hundred dollars an hour in this

1 analysis.

2 Q. Sir, isn't it true, to get right to it,
3 that the S & E III that you were thinking of when
4 you wrote this was Mr. Blackford?

5 A. And also another person that was let
6 go.

7 Q. And who was that person?

8 A. His name is David Schreck.

9 Q. When was Mr. Schreck let go?

10 A. I'm not sure. He was a good friend of
11 ours, of my wife and mine.

12 Q. Did you have some knowledge that Mr.
13 Schreck had endured a two-year period of record
14 keeping, or that someone had, in order to fire
15 them?

16 A. I'm sorry. I apologize. He was not
17 let go. He was in the middle of the process, and
18 left of his own accord.

19 Q. My question is, did you have some
20 knowledge from some source, whether it had been
21 objective or hearsay, that there had been a period
22 of record keeping engaged in for the purpose of
23 getting rid of Mr. Schreck?

24 A. Again, the record keeping is not to get
25 rid of a person.

1 Q. Were you aware that there had been a
2 period of record keeping begun with respect to any
3 disciplinary or corrective process concerning Mr.
4 Schreck?

5 A. Corrective process, yes. Mr. Schreck
6 informed us that he had received improvement
7 required on his staff evaluation and that he was in
8 the process of working with his managers and that
9 they were keeping records of his progress.

10 Q. All right. Mr. Curtis, you're telling
11 me now that the aim of this was to describe two
12 individuals that you had in mind.

13 Correct?

14 A. The intent of this message was to poke
15 fun at, take a shot at Mr. Dwight Hughes.

16 Q. But when I asked you about who you had
17 in mind as the S & E III, you said you had in mind
18 two individuals, Mr. Blackford and Mr. Schreck.

19 Correct?

20 A. Well --

21 Q. Is that correct or incorrect?

22 A. I had those two people in mind.

23 Q. All right.

24 A. But that's not the reason I chose S & E
25 III.

1 Q. In fact, the very next sentence kind of
2 belies that, wouldn't you agree, when you say,
3 "This is not mainly aimed at Dwight but is mainly
4 aimed at one," not two but one, "individual that no
5 longer works at PNNL"?

6 A. Mainly.

7 Q. And who was that, sir?

8 A. That individual would be Mike
9 Blackford.

10 Q. Other than Mr. Heister, to whom had you
11 spoken about Mr. Blackford in attempts to get him
12 corrected or disciplined or fired prior to writing
13 this E-mail? Excuse me. This posting.

14 A. You're asking me who I talked to about
15 Mr. Blackford's corrective actions?

16 Q. Yes.

17 A. My wife.

18 Q. All right.

19 A. Those were my personal feelings.

20 Q. Did your wife give you any information
21 that you considered valuable that you didn't
22 already have from your personal observations?

23 MR. DUNWOODY: You can choose
24 whether or not to answer that question, if you want
25 to assert your marital community.